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New Jersey Statutes Annotated

Title 45, Chapter 9A.

Hearing Aid Dispensers

45:9A-1. Legislative findings

The Legislature hereby finds and declares that the practice of hearing aid dispensing need be regulated for the protection of the health, safety and welfare of the citizens of this State. The Legislature further finds and declares that peer regulation and the creation of a new board of examiners to carry out the provisions of this act are not in the public interest and it has hereby devised a regulatory mechanism which is consonant with the licensing policies of this State.

45:9A-2. Definitions

As used in this act:

- a. "Board" means the State Board of Medical Examiners.
- b. "Committee" means the Hearing Aid Dispensers Examining Committee.
- c. "Hearing aid" means an electro-acoustic system scientifically designed to be head or body worn by an individual. Its basic components shall be a microphone, amplifier, and receiver. Each component shall be adapted to the needs of the individual. These needs shall be measured in acoustic gain, frequency response, and maximum power output.
- d. "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the power or range of human hearing by means of an audiometer or by any other means devised and the consequent selection of adaptation or sale of hearing aids intended to compensate for hearing loss, including the making of an impression of the ear.
- e. "Hearing aid dispenser" means a person engaged in the fitting and selling of hearing aids to a person with impaired hearing.
- f. "Director" means the Director of the Division of Consumer Affairs.

**45:9A-3. Hearing aid dispensers examining committee;
 members**

There is hereby created in the Division of Consumer Affairs of the Department of Law and Public Safety, under the State Board of Medical Examiners, a Hearing Aid Dispensers Examining Committee to consist of seven members six of whom are to be appointed by the Governor with the advice and consent of the Senate. The seventh member shall be the Director of the Division of Consumer Affairs, ex officio, or his designated representative.

Three members of the committee shall be qualified hearing aid dispensers for a period of at least 3 years immediately preceding the effective date of this act and shall hold certification, from the National Hearing Aid Society or its equivalent. All hearing aid dispenser members, other than those first appointed, shall be holders of a valid license as provided by this act. Those first appointed shall not be exempt from the requirements of sections 10 and 11 of this act, provided, however, that the board shall make provision for their examination and licensure as soon as practicable after their appointment.

One member of the committee shall be a physician and diplomate of the American Board of Otolaryngology. One member shall be a clinical audiologist and hold certification from the American Speech and Hearing Association and one member shall be a public member to represent the interests of the general public.

45:9A-4. Term of office

Each member of the committee, except the members first appointed and the director, shall serve for a term of 5 years. Each member shall hold office until the appointment of his successor. The initial appointments to the committee shall be two members for a term of 1 year; two members for a term of 2 years and two members for a term of 3 years.

Vacancies shall be filled for the unexpired term only. No member may be appointed for more than two terms.

45:9A-5. Compensation

Each member of the committee shall receive \$25.00 for each day of actual service in attending meetings of the committee at which business is transacted and in addition shall be entitled to be reimbursed for his necessary travel expenses; provided, such compensation in any 1 fiscal year shall not exceed \$1,000.00.

45:9A-6. Oath; filing; president; secretary treasurer

The members of the committee shall, before entering the discharge of their duties, and within 30 days after their appointment, take and subscribe to an oath before an officer authorized to administer oaths in this State, for the faithful performance of their duties, and file the same with the Secretary of State. They shall annually elect from their number a president and a secretary-treasurer each of which officers shall hold office for 1 year and until his successor shall have been duly elected and qualified.

45:9A-7. Duties; rules and regulations; record of proceedings

The committee shall ascertain the facts concerning the dispensing and sale of hearing aids, for the purpose of determining the need for, and desirability of, rules and regulations to promote the health, safety, and welfare of the public and to effectuate the purposes of this act and to aid the committee in the performance of its powers and duties hereunder, and the committee shall make and promulgate, with the approval of the board, rules and regulations for said purposes pursuant to the Administrative Procedures Act. The secretary- treasurer of the committee shall keep a record of all the proceedings of the committee which shall be transmitted to the board and shall be open to public examination.

45:9A-8. Course of instruction; recommendation; qualification for licensees; examination requirements; renewal of license

The committee may recommend the preparation of and administration by the State Department of Education or Department of Higher Education or public institutions designated by either of said departments of a course of instruction concerned with the fitting and selection of hearing aids. The committee may require, with the approval of the board, that prospective licensees shall complete such a course of instruction as a condition of licensure. The committee shall publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this State. The committee may require, with the approval of the board, that licensees, as a condition of renewal, attend courses designed to update and refresh their knowledge and skills.

45:9A-9. Application for license

Any person desiring to commence the practice of dispensing and fitting hearing aids in this State shall file with the secretary of the committee

an application, to be furnished by said secretary and verified by oath of the applicant, stating therein that he is a person of good moral character, more than 18 years of age, has received training and has had experience in the practice of dispensing and fitting hearing aids. The applicant shall file with the secretary of the committee a fee of \$20.00 for the examination.

45:9A-10. Verification of qualifications; time of examinations

An applicant for a license who is notified by the committee that he has fulfilled to its satisfaction the requirements set forth in section 9 of this act¹ shall appear at such time and place to be examined by written and practical tests in order to demonstrate that he is qualified to practice dispensing and fitting hearing aids. The committee shall give at least one examination of the type prescribed in this act each year, and such additional examinations as the volume of applications therefor may make appropriate. The committee shall give due public notice of the date, time and place of said examinations.

¹ Section 45:9A-9.

45:9A-11. Contents of examination

The examination provided in this act shall consist of:

- a. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:
 - (1) Basic physics of sound.
 - (2) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders.
 - (3) Structure and function of hearing aids.
- b. Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
 - (1) Pure tone audiometry, including air conduction testing and bone conduction testing.
 - (2) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing.
 - (3) Effective masking.
 - (4) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy.

- (5) Selection and adaptation of hearing aids and testing of hearing aids.
- (6) Taking earmold impressions.
- (7) Other skills as may be required for the fitting of hearing aids.

The tests under this section shall not include questions requiring a medical or surgical education.

45:9A-12. Certificate of registration; issuance; conditions; duration of license

Upon payment of \$25.00 the committee shall register each applicant who satisfactorily passes the examination. Thereupon the board shall issue to the applicant a certificate of registration. The license shall be effective for 1 year.

45:9A-13. Reciprocity with other states; certificates of endorsement

Whenever the committee determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this act for the practice of fitting and dispensing hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this act are qualified to dispense and fit hearing aids, the committee may issue certificates of endorsement to applicants therefor who hold current, unsuspended and unrevoked certificates or licenses to dispense and fit hearing aids in such other state or jurisdiction. No such applicant for a certificate of endorsement pursuant to this subsection shall be required to submit to or undergo any examination, investigation or other procedure, other than the payment of fees, pursuant to this act. The holder of a certificate of endorsement shall be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal and procedures therefor, suspension and revocation of certificates of endorsement shall be the same as for renewal, suspension and revocation of a license.

45:9A-14. Holder of certificate of endorsement; place of practice; notice to committee; record

A person who holds a certificate of endorsement shall notify the committee in writing of the address of the place or places where he engages or intends to engage in the practice of fitting or dispensing of hearing aids.

The committee shall keep a record of the places of practices of persons who hold licenses or certificates of endorsements. Any notice required to be given by the committee to a person who holds a license or certificate of endorsement may be given by mailing it to him at the address given by him to the committee.

45:9A-15. Renewal fee; suspension of license or certificate for failure to renew

A person except a medical physician or osteopath who practices the dispensing and fitting of hearing aids shall annually pay to the committee a fee of \$25.00 for a renewal of his license or certificate of endorsement. The committee may suspend the license or certificate of any person who fails to have his license or certificate renewed.

45:9A-16. Temporary licenses

- a. An applicant who fulfills the requirements of section 9¹ of this act who has not previously applied to take the examination provided under section 10 of this act² may apply to the board for a temporary license.

Upon receiving an application for said temporary license, accompanied by a fee of \$5.00, the committee shall issue a temporary license which shall entitle the applicant to practice the dispensing and fitting of hearing aids for a period ending 30 days after the conclusion of the next examination given after the date of issue.

No temporary license shall be issued by the committee unless the applicant shows to the satisfaction of the committee that he is or will be supervised and trained by a person who holds a valid license or certificate of endorsement issued pursuant to this act.

If a person who holds a temporary license issued under this section does not take the next examination given after the date of issue, the temporary license shall not be renewed, except for good cause shown to the satisfaction of the committee.

If a person who holds a temporary license issued under this section takes and fails to pass the next examination given after the date of issue, the committee may renew the temporary license for a period ending 30 days after the results of the next examination given after the date of renewal are announced. In no event shall more than one renewal be permitted. The fee for renewal shall be \$20.00.

- b. An applicant who meets the requirements of section 9 of this act except with respect to training and experience and is desirous of obtaining the requisite training and experience in order to qualify for a license and who proves to the satisfaction of the committee that he will be directly supervised and trained by a person who holds a valid license or certificate of endorsement issued pursuant to this act, may have a temporary license issued to him which shall entitle him to be engaged, under such direct supervision, in the fitting and selling of hearing aids for a period ending 30 days after the results of the next examination are announced. Such a temporary license may be renewed from period to period not to exceed 2 consecutive years.

¹ Section 45:9A-9.

² Section 45:9A-10.

45:9A-17. Revocation, suspension or refusal to renew license or certificate of endorsement; grounds

The Director of the Division of Consumer Affairs shall have the power upon notice and opportunity for a hearing to revoke, suspend, or refuse to renew any license, temporary license or certificate of endorsement issued pursuant to this act for the following reasons:

- a. Being convicted of an offense involving moral turpitude. The record of such conviction, or certified copy thereof from the clerk of the court where such conviction occurred or by the judge of such court, shall be sufficient evidence to warrant revocation or suspension.
- b. By securing a license or certificate under this act through fraud or deceit.
- c. For unethical conduct, ignorance, neglect, incompetence or inefficiency in the conduct of his practice. Incompetence shall include but not be limited to the improper or unnecessary fitting of a hearing aid. For the purposes of this act unethical conduct shall mean:
 - (1) The obtaining of any fee or the making of any sale by fraud or misrepresentation.
 - (2) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act.
 - (3) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, how-

ever disseminated or published, which, is misleading, deceiving, improbable or untruthful.

- (4) Advertising a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.
 - (5) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the word “doctor,” “clinic,” or like words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate.
 - (6) Habitual intemperance.
 - (7) Gross immorality.
 - (8) Permitting another to use his license or certificate.
 - (9) To imitate or simulate the trademarks, trade names, brands or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers; or
 - (10) To use any trade name, corporate name, trademark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false, deceptive, or misleading in any other material respect.
 - (11) To directly or indirectly give, or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.
- d. For practicing while knowingly suffering with a contagious or infectious disease.

- e. For the use of a false name or alias in his practice.
- f. For violating any of the provisions of this act or rules or regulations promulgated hereunder.

45:9A-18. Fees; disposition; expenditures of committee

All fees coming into the custody of the committee, including examination fees, license fees, renewal fees, fines, penalties and other payment, shall be paid by the board to the State Treasurer and become a part of the general fund.

All expenditures deemed necessary to carry out the provisions of this act shall be paid by the State Treasurer from the license fees and other sources of income of the committee, within the limits of available appropriations according to law, but in no event shall expenditures exceed the revenues of the committee during any fiscal year.

45:9A-19 to

45:9A-21. (Repealed)

45:9A-22. Exemptions

This act shall not apply to any person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization, which is primarily supported by voluntary contributions unless they sell hearing aids.

This act shall not be construed to prevent any person who is a medical or osteopathic physician licensed to practice by the board from treating, or fitting hearing aids to, the human ear.

45:9A-23. Purchasers; statements by licensee; receipt; contents

- a. A licensee shall advise a prospective hearing aid user at the outset of their relationship that any examination or representation made by the licensed hearing aid dispenser in connection with the practice of fitting and selling of a hearing aid is not an examination, diagnosis or prescription by a person licensed to practice medicine in this State or by a certified audiologist and, therefore, must not be regarded as medical opinion.

- b. A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:
- (1) the date of consummation of the sale,
 - (2) specifications as to the make, serial number, and model number of the hearing aid or aids sold,
 - (3) the address of the principal place of business of the licensee,
 - (4) a statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact,
 - (5) the number of the licensee's license,
 - (6) the terms of any guarantee or express warranty, if any, made to the purchaser with respect to such hearing aid or hearing aids,
 - (7) such receipt shall bear, or have attached to it in no smaller type than the largest used in the body copy portion, the following: The purchaser has been advised at the outset of his relationship with the hearing aid dispenser that any examination or representation made by a licensed hearing aid dispenser in connection with the practice of fitting and selling of this hearing aid, or hearing aids, is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this State, or by certified audiologists and therefore must not be regarded as medical opinion.

45:9A-24. Written recommendation to consult licensed physician; conditions; signature for receipt; list of physicians

Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

- (a) visible congenital or traumatic deformity of the ear,
- (b) history of, or active drainage from the ear within the previous 90 days,

- (c) history of sudden or rapidly progressive hearing loss within the previous 90 days,
- (d) acute or chronic dizziness,
- (e) unilateral hearing loss of sudden or recent onset within the previous 90 days,
- (f) significant air-bone gap.

A person receiving the written recommendation to purchase a hearing aid shall sign a receipt for the same.

The licensee shall provide the prospective hearing aid user with a list of at least three physicians specializing in diseases of the ear, practicing in the area, and their addresses or if none are practicing in the area, then a list of at least three physicians and their addresses.

45:9A-25. Sale of hearing aid to person under 18

No hearing aid shall be sold by an individual licensed under this chapter, to a person less than 18 years of age unless within the preceding 6 months a recommendation for a hearing aid has been made by a board-certified, or a board-eligible physician specializing in otolaryngology, or by an audiologist certified by the American Speech and Hearing Association after examination and diagnosis by a board-certified or board-eligible otolaryngologist. A replacement of an identical hearing aid within 1 year shall be an exception to this requirement.

45:9A-26. Records to be maintained by licensee

A licensee shall keep and maintain in his office or place of business the following records:

- (a) results of tests as they pertain to the fitting of the hearing aid,
- (b) a copy of the written receipt required by section 23¹ and a copy of the written recommendation and receipt required by section 24,² and
- (c) copies of such other records as the committee or the director shall reasonably require.

All such records shall be kept and maintained by the licensee for a period of 7 years.

¹ Section 45:9A-23.

² Section 45:9A-24.

45:9A-27. Unlawful practice or advertisement of fitting and selling of hearing aids

It is unlawful for an individual to engage in the practice of fitting and selling of hearing aids or to display a sign or in any other way to advertise or hold himself out as being so engaged without having at the time of so doing a valid unsuspended, unrevoked and unexpired license, temporary license or certificate of endorsement. Such license, temporary license or certificate of endorsement shall be conspicuously posted in the licensee's office or place of business at all times.

45:9A-28. (Repealed)

New Jersey Statutes Annotated

Title 45, Chapter 1.

Uniform Enforcement Act

45:1-14. Legislative findings and declarations; liberal construction of act

The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

45:1-15. Boards and professions or occupations regulated by or through such boards; application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by or through such boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

45:1-16. Definitions

As used within this act the following words or terms shall have the indicated definition unless the context clearly indicates otherwise.

“Board” means any professional or occupational licensing board designated in section 2 of this act.¹

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

¹ Section 45:1-15.

45:1-17. Powers of Attorney General to implement act and administer law enforcement activities of boards

In implementing the provisions of this act and administering the law enforcement activities of those professional and occupational boards located within the Division of Consumer Affairs, the Attorney General may:

- a. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate rules and regulations consistent with the provisions of this act and the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.) governing the procedure for administrative hearings before all boards within the Division of Consumer Affairs. Such rules and regulations shall govern administrative complaints, answers thereto, issuance of subpoenas, appointment of hearing examiners, adjournments, submission of proposed findings of fact and conclusions of law, the filing of briefs, and such other procedural aspects of administrative hearings before the boards as the Attorney General may deem necessary; provided, however, nothing herein authorized shall be construed to require the Attorney General to promulgate rules regarding prehearing investigative procedures.
- b. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate substantive rules and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure. In ad-

dition to promulgating such rules and regulations, the Attorney General may direct that any proposed or existing regulation be amended, abandoned or repealed. Prior to the final adoption of any regulation affecting the activities of any professional or occupational licensing agency, board or committee located within the division and prior to the issuance of any directive to amend, abandon or repeal any regulation, the Attorney General or his designee shall first consult with the agency, board or committee whose activities are affected regarding the proposed action.

- c. After a full consideration of all relevant facts and the applicable law, may direct the initiation of any appropriate enforcement action by a professional or occupational licensing board or set aside, modify or amend, as may be necessary, any action or decision of a licensing agency, board or committee located within the Division of Consumer Affairs; provided, however, no such action shall be directed by the Attorney General in reviewing the action or decision of an agency, board or committee unless such action or decision is contrary to applicable law.

45:1-18. Investigative powers of boards, director or attorney general

Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

- a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;
- b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;
- c. Inspect any premises from which a licensed profession or occupation is conducted;

- d. Examine any goods, ware or item used in the rendition of any professional or occupational service;
- e. Examine any record, book, document, account or paper maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation;
- f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

45:1-19. Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpoena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging such person in contempt of court; or
- b. Granting such other relief as may be required; or
- c. Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

45:1-20. Compelling testimony or production of book, paper or document; immunity from prosecution

If any person shall refuse to testify or produce any book, paper, or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may

tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper, or document by the Attorney General, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction of the Attorney General shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony or from any civil or administrative action arising from such testimony.

45:1-21. Grounds for refusal to admit to examination or denial, suspension or revocation of any certificate, registration or license; definitions

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activity regulated by the board. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;
- j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection.
- k. Has violated any provision of P.L. 1983, c. 320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction.

For purposes of this act:

“Completed application” means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c. 421 (C. 13:1D-101), for the class or category of permit for which application is made.

“Permit” has the same meaning as defined in section 1 of P.L.1991, c. 421 (C. 13:1D-101).

45:1-21.1. Annual summary of compliance information and attendance at continuing education seminars; costs; information deemed public records

- a. A board obtaining information from the Department of Environmental Protection pursuant to section 1 of P.L.1991, c. 418 (C. 13:1D-110) on the compliance of a member of a regulated profession with the requirements for completed applications of the department, shall annually develop a detailed written summary of the information gathered by the department pursuant to P.L.1991, c. 418 (C. 13:1D-110) regarding compliance with the department's requirements for completed applications and attendance records for continuing education seminars required to be filed with the department pursuant to section 2 of P.L.1991, c. 419 (C. 13:1D-117).

- b. Any reasonable costs incurred in preparation of the report required pursuant to this section may be included in the charges authorized pursuant to P.L.1974, c. 46 (C. 45:1-3.2).
- c. Information required to be compiled by a board pursuant to this section, shall be deemed to be public records subject to the requirements of P.L.1963, c. 73 (C. 47:1A-1 et seq.).

45:1-22. Additional or alternative penalties to revocation, suspension or refusal to renew; temporary order suspending or limiting license; subpoena

In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

- a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;
- b. Assess civil penalties in accordance with this act;
- c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;
- d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;
- e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions.

A board may, upon a duly verified application of the Attorney General alleging an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an admin-

istrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

45:1-23. Summary proceeding in Superior Court; injunction; orders necessary to prevent unlawful practice or remedy past unlawful activity

Whenever it shall appear to a board, the director or the Attorney General that a violation of any act, including the unlicensed practice of the regulated profession or occupation, or regulation administered by such board has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice. In any such proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter such orders as may be necessary to prevent the performance of an unlawful practice in the future and to fully remedy any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by a board.

45:1-24. Failure to comply with order of board directing payment of penalties or restoration of moneys or property; enforcement

Upon the failure of any person to comply within 10 days after service of any order of a board directing payment of penalties or restoration of moneys or property, the Attorney General or the secretary of such board may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the

date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of a judgment creditor in addition to exercising any other available remedies. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of any order entered by a board or to collect any penalty levied thereby may be brought in any municipal court or the Superior Court in summary manner pursuant to the Penalty Enforcement Act, (N.J.S. 2A:58-1 et seq.) and the rules of court governing the collection of civil penalties. Process in such action shall be by summons or warrant, and in the event that the defendant fails to answer such action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing such person before the court to satisfy any order entered.

45:1-25. Violations; civil penalty; action to collect or enforce

Any person violating any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$2,500.00 for the first offense and not more than \$5,000.00 for the second and each subsequent offense. For the purpose of construing this section, each transaction or statutory violation shall constitute a separate offense; provided, however, a second or subsequent offense shall not be deemed to exist unless an administrative or court order has been entered in a prior, separate and independent proceeding. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to the Penalty Enforcement Act (N.J.S. 2A:58-1 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in

the Superior Court. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State.

45:1-26. Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

45:1-27. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

New Jersey Administrative Code

Title 13, Chapter 35.

Subchapter 8. Hearing Aid Dispensers

13:35-8.1 Purpose

The rules in this subchapter are established pursuant to N.J.S.A. 45:9A-7 and govern the licensing and the practice of hearing aid dispensing in the State of New Jersey.

13:35-8.2 Definitions

The following words and terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise.

“Act” means the New Jersey Hearing Aid Dispensers Act, N.J.S.A. 45:9A-1 et seq. as amended and/or supplemented.

“Advertisement” means any attempt, directly or indirectly, by publication, display, dissemination or circulation, in print or electronic media, which induces or attempts to induce any person to purchase or enter into an agreement to purchase a hearing aid, services and/or merchandise from a licensee.

“Board” means the State Board of Medical Examiners.

“Committee” means the Hearing Aid Dispensers Examining Committee.

“Hearing aid” means a hearing aid as defined by N.J.S.A. 45:9A-2(c) and includes the earmold system.

“Licensee” means any person who has been duly issued a license to fit and dispense hearing aids in accordance with N.J.S.A. 45:9A-1 et seq. and this subchapter.

“Place of practice” means the actual physical location of the office and business address from which the licensee conducts his or her business and where relevant books and records are maintained.

“Sponsor” means any person holding a valid license pursuant to N.J.S.A. 45:9A-1 et seq. for two or more years who is deemed qualified by the Committee to instruct, train and supervise in the requisite skills, methods and techniques so as to insure competency in the fitting and dispensing of hearing aids and who has assumed the responsibilities for supervising and train-

ing in accordance with N.J.S.A. 45:9A-16 and the provisions of this subchapter.

“Temporary license” means a temporary license as defined by N.J.S.A. 45:9A- 16(a) and the provisions of this subchapter.

“Training permit” means a temporary license as defined by N.J.S.A. 45:9A- 16(b) and the provisions of this subchapter.

13:35-8.3 Training and experience requirements

- (a) An applicant for licensure as a hearing aid dispenser shall submit one of the following to the Committee:
 - 1. Proof of completion of a minimum of six months continuous or interrupted training within a 24-month period ending with the deadline for making application to take the next examination;
 - 2. Proof of successful completion of a county college course in hearing aid selection and fitting approved by the Committee and/or the Commission on Higher Education; or
 - 3. Proof of successful completion of a master’s degree in audiology from an American Speech Language Hearing Association accredited college or university after January 1, 1993.
- (b) An individual, including a New Jersey licensed audiologist, who has met training and experience requirements set forth in (a) above shall not dispense a hearing aid as defined by N.J.A.C. 13:35-8.7 until he or she passes the written and practical examination administered by the Committee, unless the individual is under supervision as the holder of a training permit or a temporary license.
- (c) No person shall commence training as a hearing aid dispenser until such time as he or she has received a training permit. The training period shall be calculated to have commenced on the date the permit is issued.
- (d) Upon being issued a training permit, the trainee shall train in the same office or business location as that of his or her sponsor and in the physical presence of the sponsor. The training shall consist of the following:
 - 1. 40 hours of training with an audiometer;

2. 160 hours of hearing aid dispensing procedures, including the taking of earmold impressions, the alteration of earmolds and hearing aids, and application and fitting techniques;
 3. Reading all the books and articles relating to hearing aid dispensing specified in a list formulated by the Committee.
- (e) No trainee shall be permitted to sell, fit or dispense hearing aids or to engage in the potential fitting or dispensing of hearing aids except in the same office or business location of his or her sponsor and in the physical presence of the sponsor.
- (f) A trainee shall complete the training only with the sponsor designated by the Committee and only during regular business hours.

13:35-8.4 Training permits; issuance and practice

The Committee shall issue a training permit in accordance with N.J.S.A. 45:9A-16(b) and the provisions of this subchapter.

13:35-8.5 Temporary licenses; issuance

- (a) The Committee may issue a temporary license in accordance with N.J.S.A. 45:9-16(a) and the provisions of this subchapter to an applicant provided he or she has not previously held a training permit or has not previously taken the licensing examination described in N.J.S.A. 45:9A-10 and N.J.A.C. 13:35-8.16. A temporary license shall not be renewed when an applicant has failed the licensing examination, except on showing of good cause (such as illness or emergency precluding the taking of the examination).
- (b) Persons from another jurisdiction who are not eligible for license by endorsement under N.J.S.A. 45:9A-13 who wish to sit for the licensing examination shall demonstrate a minimum of two years of full-time independent experience in dispensing, fitting and selling hearing aids as defined by N.J.S.A. 45:9A-2(d) and N.J.A.C. 13:35-8.8. The applicant must submit documentation and verification of said experience satisfactory to the Committee, or submit verification of current licensure to practice audiology in the State of New Jersey.
- (c) Applicants may be interviewed by the Committee, at which time their education, training and experience will be examined. Where an applicant's documentation of education, training and experience appears unsatisfactory, the Committee may deny a temporary

license, but may permit the applicant to sit for the next licensing examination.

13:35-8.6 Temporary licenses; practice

- (a) A temporary licensee shall spend a minimum of 20 days in the office or business location of his or her sponsor within any 60-day period.
- (b) A temporary licensee shall not maintain an independent office or a place of business for the purpose of dispensing hearing aids, but shall at all times operate in the sponsor's office in a manner consistent with the ability of his or her sponsor to provide responsible supervision.
- (c) No temporary licensee shall complete a sale of hearing aids without the physical presence of his or her sponsor, and without obtaining the sponsor's signature on the purchase agreement.
- (d) Every temporary licensee shall submit a daily written report of his or her activities to his or her sponsor which shall be retained as part of the permanent records.
- (e) Upon submitting an application for a license, every temporary licensee shall submit an affidavit from his or her sponsor attesting to the supervision requirements of N.J.S.A. 45:9A-1 et seq. and this subchapter.
- (f) Upon request, all records shall be made available to the Committee for its review and evaluation.

13:35-8.7 Sponsors

- (a) Every trainee and temporary licensee shall be supervised and trained by a sponsor who has fulfilled the requirements of N.J.S.A. 45:9A-16 and the provisions of this subchapter.
- (b) In addition, a sponsor shall:
 - 1. Supervise at any one time no more than a total of two persons who may be temporary licensees and/or permit holders;
 - 2. Be present in the same physical location for purposes of training and supervision;
 - 3. Not pre-sign purchase agreements;

4. Maintain a daily log for each day of supervision and training as part of the permanent record;
5. Provide an affidavit attesting to the supervision requirements of N.J.S.A. 45:9A-1 et seq. and this subchapter; and
6. Notify the Committee within five days of any termination in the sponsorship arrangement, stating the reasons therefor.

13:35-8.8 Scope of practice

- (a) The practice of fitting a hearing aid as defined by N.J.S.A. 45:9A-2(d) shall include:
 1. The evaluation or measurement of the power or range of human hearing utilizing customary and appropriate instrumentation available in the field;
 2. The making of an ear impression;
 3. Pursuant to N.J.A.C. 13:35-8.9, the fitting and dispensing of a deep ear canal hearing aid device that requires an impression taking technique involving instruments applied to the tympanic membrane;
 4. The cleaning, change of design or alteration of an earmold (including tubing);
 5. The change of frequency response of any instrument;
 6. The selection or adaptation of a hearing aid; and
 7. The interpretation and evaluation of hearing tests and the physical examination of a person's ear, where such interpretation, evaluation or examination is used in conjunction with the dispensing of a hearing aid.
- (b) The practice of dispensing a hearing aid as defined by N.J.S.A. 45:9A-2(d) shall include the sale, rental or lease of hearing aids, the evaluation of the necessity for repair of a hearing aid, and the delivery after repair.
- (c) The practice of fitting and dispensing a hearing aid shall include any activity which reasonably may be expected to result in the sale of a hearing aid, including but not limited to canvassing, counseling, soliciting and screening for potential hearing aid users.

- (d) The terms of this subchapter are not to be construed to include activities of a licensed audiologist under N.J.S.A. 45:3B-21 et seq., unless he or she is also engaged in the dispensing of hearing aids.
- (e) A license to fit and dispense hearing aids does not confer upon a licensee the right to hold oneself out to the public as an audiometrist, audiologist, otologist, otorhinolaryngologist or any such title which connotes medical or audiological competence.

13:35-8.9 Fitting and dispensing of deep ear canal hearing aid devices

- (a) A licensee may fit and dispense a deep ear canal hearing aid device that requires an impression taking technique involving instruments applied against the tympanic membrane, provided that the licensee advises the Committee, on a form provided by the Committee, of the name and address of a Board-certified ENT physician licensed in this State who has agreed to be constantly accessible through electronic communications during the impression taking process and who is available to render immediate in-person assistance when required.
- (b) The licensee shall not initiate the impression taking process unless the licensee has ensured that a physician is available as required by (a) above and that the consumer has, within seven days prior to the impression taking process, received a medical evaluation from an ENT physician licensed in the State. The physician's evaluation shall determine whether a deep ear canal hearing aid device may be safely and effectively worn by the consumer and shall be documented by written medical clearance, which the licensee shall place in the consumer's patient records.
- (c) The licensee shall immediately refer any consumer who develops any complications during the impression taking or fitting process to the physician identified in (a) above or to a physician selected by the consumer.
- (d) The licensee shall refer the consumer, following the impression taking process, to the physician who performed the pre-impression taking evaluation or to another plenary physician licensed in the State and shall secure a written evaluation regarding the placement

of the deep ear canal hearing aid device and the consumer's continuing ability to safely and effectively wear the device.

- (e) The licensee shall maintain documentation of the evaluations required pursuant to subsection (b) and (d) above consistent with the provisions of N.J.A.C. 13:35-6.5(b).

13:35-8.10 Supervising licensee

- (a) Every corporation, partnership, trust, association or unincorporated business entity operating for the purpose of fitting and dispensing hearing aids shall designate a duly licensed hearing aid dispenser to act as a supervising licensee.
- (b) All such businesses shall file annually with the Committee the name and license number of the designated supervising licensee.
- (c) The supervising licensee shall be responsible for assuring that all records are maintained in accordance with N.J.A.C. 13:35-8.16.

13:35-8.11 Notification to the Committee; suspension of license for failure to renew

- (a) Every licensee shall notify the Committee of any change of residence or place of practice within seven days following such change.
- (b) Every licensee, temporary licensee or trainee whose license or permit has expired or has been terminated shall return the license or permit to the Committee office within five days of such invalidation.
- (c) Every licensee who does not respond to the computerized notice for renewal of his or her registration prior to the renewal deadline but who files a renewal application within 60 days after the expiration of the biennial registration period shall be assessed a late fee of \$25.00. Thereafter, licensees who seek to renew their registrations shall be assessed a reinstatement fee of \$100.00.
 - 1. A licensee may petition for license reinstatement by making written application to the Committee.
 - 2. The Committee may require payment for any missed registration period caused by his or her failure to renew.
 - 3. The Committee may make reasonable inquiry to evaluate his or her qualifications for continued licensure.

- (d) A licensee may retire his or her licensure by surrendering the registration for any period of time when he or she is not engaged in hearing aid dispensing. Prior to reinstatement of the license, the Committee may make reasonable inquiry to evaluate his or her qualifications for continued licensure.

13:35-8.12 Equipment

- (a) The equipment necessary to dispense hearing aids in accordance with N.J.S.A. 45:9A-1 et seq. and the provisions of this subchapter shall be available for use at all place(s) of practice.
- (b) All electrical equipment used in testing hearing aids including the audiometer shall be inspected as often as necessary to assure accuracy and calibrated no less often than once a year. Audiometers shall be calibrated in accordance with the American National Standard Specifications for Audiometers (ANSI S3.6-1969) and the American National Standard for an Artificial Head Bone for the Calibration of Bone Vibrations (ANSI S3.13-1972). Complete records of calibration shall be maintained as part of the licensee's permanent records.

13:35-8.13 Hearing testing

- (a) No hearing aid shall be sold to a person who has not first been given a hearing examination utilizing appropriate established procedures and instrumentation for the measurement of the hearing and the fitting of hearing aids, unless the dispensing consists solely of making an exact make and model replacement or spare aid of an immediately preceding hearing aid fitted within the last 12 months.
 - 1. The appropriate hearing test which must precede any hearing aid fitting shall include at a minimum pure tone air conduction and bone conduction thresholds. In such cases, the testing shall be performed under conditions suitable to obtain valid and reliable thresholds.
 - 2. Where indicated, SRT, MCL, TD, speech discrimination and other tests which may be necessary shall be provided by using customary and appropriate instrumentation.
- (b) A significant air bone gap as referred to in N.J.S.A. 45:9A-24(f) shall be a gap of 15 db or more measured at 500 HZ, 1,000 HZ or 2,000 HZ. In the event that there is a gap at any of these frequen-

cies, or higher, the individual shall be referred to a medical doctor. A written waiver of the individual's right to be examined by a medical doctor may be accepted.

13:35-8.14 Advertising and Solicitation

- (a) Any licensee who engages in the use of advertising, stationery, business cards or signs which contain any of the following shall be deemed to have committed professional misconduct in violation of N.J.S.A. 45:1-21:
1. Any statement, claim or format which is false, fraudulent, misleading or deceptive;
 2. Any misrepresentation of material fact;
 3. Any omission or concealment of material fact, under circumstances where a licensee knows or should know that the omission is improper or is likely to hamper a customer from making a full and informed judgment on the basis of the information set forth;
 4. Any claim that the service performed or the materials used are superior to that which is ordinarily performed or used in the business unless such claim can be documented as truthful and not misleading;
 5. A technique or communication which appears to intimidate, exert undue pressure or undue influence on a customer;
 6. The use of terms such as "prescription made" and "certified hearing aid audiologist" or "audiologist," unless the person to whom reference made is a licensed audiologist as defined by N.J.S.A. 45:3B-2(a);
 7. The use of any term that connotes a medical competence that does not exist; or
 8. The use of the name of a temporary licensee or trainee in an advertisement, sign, stationery or business card.
- (b) The name, license number and title designation ("Hearing Aid Dispenser") of the supervising licensee shall appear on every advertisement, stationery or business card. The name and title designation of the supervising licensee shall appear on every sign.

- (c) The responsibility for the form and content of every advertisement, sign, stationery or business card shall be jointly and severally that of each licensee who is a principal, partner or officer of the firm or entity so identified as well as the supervising licensee whose name and license number is displayed therein.
- (d) It shall be professional misconduct for a licensee to visit the home or office of a potential customer for the purpose of inducing a sale of a hearing aid without having obtained the express prior consent of such potential customer.

13:35-8.15 Abandonment; excessive fees

- (a) It shall be professional misconduct for a licensee to unilaterally terminate without good cause as determined by the Committee, an agreement to deliver service(s) and/or equipment to a customer without first making arrangements for the orderly continuation of said services and/or equipment delivery.
- (b) It shall be professional misconduct for any licensee to demand or accept excessive fees for service(s) or equipment rendered in connection with the sale or fitting of hearing aids. The excessiveness of such fee shall be determined by the Committee based on whether, after a review of the facts, a reasonable person would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances and as further described in N.J.A.C. 13:35-6.11(c).

13:35-8.16 Itemization of services and equipment; retention of records

- (a) In addition to the written specified data and receipt requirements defined in N.J.S.A. 45:9A-23, a written itemization of the costs of all services and equipment shall be presented to a customer before dispensing a hearing aid. The itemization shall include all services and equipment including:
 - 1. Hearing test and examination of the ear;
 - 2. Fitting of an earmold;
 - 3. Dispensing services;
 - 4. Necessary cleaning, servicing and refitting for at least the first year following sale;

5. The cost of the earmold; and
 6. The cost of the hearing aid.
- (b) Every licensee shall prepare and retain a copy of all records including the itemization for a period of seven years following the sale.
 - (c) Every licensee shall obtain and maintain a medical waiver or medical clearance in accordance with applicable federal law.
 - (d) Every licensee shall designate his or her name or initials and license number and the date the service was rendered on all records maintained for the purpose of fitting or dispensing hearing aids.
 - (e) Every licensee shall make available upon the request of the Committee any and all records maintained for the purpose of fitting or dispensing hearing aids. Every customer or authorized representative of the customer shall be promptly given a copy of his or her own record as described in N.J.A.C. 13:35-6.5.

13:35-8.17 Licensing examination

- (a) The licensing examination shall consist of a written and practical examination in accordance with N.J.S.A. 45:9A-11.
- (b) The written examination shall contain sections relating to theory and knowledge about fitting and dispensing hearing aids and knowledge relating to the laws and regulations governing the practice of fitting and dispensing hearing aids.
 1. In order to pass the licensing examination the candidate shall attain a score of 70 percent or greater on each section.
 2. Candidates who fail all or any section of the written examination shall be required to sit for the entire written examination during the next regularly scheduled examination with one exception: candidates failing only the law and regulation section may be admitted to a make-up examination for this section only.
- (c) A candidate will only be permitted to take the practical examination if he or she has successfully passed the written examination. In order to pass the practical examination, a candidate shall attain a passing grade on each part of the practical examination. A candidate shall be eligible to re-take the part(s) failed for one additional examination. No passing credit shall be carried over to a third

examination and the candidate failing two exam sessions shall be required to take all sections of the examination.

- (d) All examinations and re-examinations will be offered only during the regularly scheduled examination session.

13:35-8.18 Violation of the rules

- (a) Failure to comply with any provision of N.J.S.A. 45:9A-1 et seq., or this subchapter shall be deemed a violation of the Hearing Aid Dispensers Act and may result in disciplinary action pursuant to N.J.S.A. 45:1-21 and 45:1-22.
- (b) The notice of proposed suspension or revocation shall inform the licensed individual of the right to request a hearing. The hearing shall be pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

13:35-8.19 Fee schedule

- (a) The fee schedule for the Hearing Aid Dispensers Examining Committee of the State Board of Medical Examiners, in the Division of Consumer Affairs of the Department of Law and Public Safety, shall be as follows:
 - 1. Application fee: \$20.00 (non-refundable)
 - 2. Temporary licenses \$50.00
 - 3. Training permits \$50.00
 - 4. Examination
 - i. Written \$50.00
 - ii. Practical \$25.00
 - 5. Initial Registration Fee
 - i. If paid during the first year of a biennial renewal period \$150.00
 - ii. If paid during the second year of a biennial renewal period \$75.00
 - 6. Endorsement
 - i. Review of credentials \$30.00
 - ii. Endorsement fee

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| During the first year of a biennial
renewal period | \$110.00 |
| During the second year of a biennial
renewal period | \$55.00 |
| 7. Biennial registration renewal | \$150.00 |
| 8. Renewal or Extension of Temporary
License and Training Permit | \$20.00 |
| 9. Late fee | \$25.00 |
| 10. Reinstatement, Biennial Registration | \$100.00 |
| 11. Duplicate or replacement of biennial
registration certificate | \$25.00 |
| 12. Preparation of certification papers
for applicants to other states | \$25.00 |
- (b) The Committee will refund the examination fee only if the application is rejected by the Committee or withdrawn by the applicant within 14 days after the Committee's receipt of the application.
- (c) An applicant who fails to sit for an examination for which payment has been submitted may, one time only, have the fee credited toward the next scheduled examination. If the applicant fails to sit for such next scheduled examination, the fee will be forfeited.

13:35-8.20 License renewal; continuing education requirement

- (a) No license renewal shall be issued by the Director unless the applicant confirms on his or her renewal application to the Hearing Aid Dispensers Examining Committee that during the two calendar years preceding application for renewal he or she participated in courses of continuing education of the type and number of credits specified in this section. Such continuing education is a mandatory requirement for license renewal. Licensees shall be solely responsible for obtaining and maintaining documentation on his or her completion of the required continuing education courses during the registration period. Such documentation shall be submitted to the Committee upon request, and will be surveyed on a random basis. The provisions of this subsection shall not apply to licensees renewing their licenses for the first time.

- (b) Evidence of 20 documented course hours of continuing education shall be required of each applicant as a condition of biennial license renewal.
- (c) The number of creditable course hours and course contents must be accepted and approved by the National Institute for Hearing Instruments Studies (NIHIS), the educational arm of the National Hearing Aid Society (NHAS), and the Committee except for courses completed through an accredited college or university. A course in hearing aid dispensing creditable by the institution toward three or more credits completed at an accredited college or university shall receive credit for 10 continuing education course hours.
- (d) Acceptable continuing education courses shall be in any area which will update and refresh the clinical skills or knowledge of a hearing aid dispenser. Notwithstanding that the continuing education course meets the requirements, the Committee at its discretion may at any time examine and review any course claimed for credit. If, in the opinion of the Committee, such course does not clearly meet the requirements of this section, the course shall be disallowed for credit toward the required 20 continuing education credits.
- (e) In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number of hours required by this section, the documented hours in excess of those required shall not be credited toward license renewal for subsequent years.

New Jersey Administrative Code

Title 13, Chapter 45.

Uniform Regulations

SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C-1.1 Definition of “licensee”

(a) For the purpose of this subchapter, “licensee” shall mean any licensee, permittee or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board, or any committee, or other sub-agency thereof located within the Division;
3. The Division of Consumer Affairs, Office of Consumer Protection, Regulated, Business Section (Employment Agencies and Temporary Help Service Firms) pursuant to N.J.S.A. 34:8-24 et seq.; or
4. The Legalized Games of Chance Control Commission.

13:45C-1.2 Licensee’s duty to cooperate in investigative inquiries

A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee’s licensing agency into a licensee’s conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions. A licensee’s failure to cooperate, absent good cause or *bona fide* claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency’s enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency’s enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct

or other good cause or grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct.
2. The failure to timely provide records related to licensee conduct.
3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not require an adjournment of the proceeding.
4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession.
5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a *bona fide* claim of privilege.
6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law.
7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage counselor-client privilege, professional counselor-client privilege, associate counselor-client privilege and the social worker-client privilege shall be unavailable. Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

- (a) Any statements, records or other information acquired which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:
 - 1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;
 - 2. The professional or occupational licensing board or the committee or other sub-agency of the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or
 - 3. A Deputy Attorney General
- (b) Except as may be otherwise ordered as provided in this subchapter, access to the statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the board or other sub-agency of the Division hav-

ing a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain.

- (c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.